

U.S. Department
of Transportation
**United States
Coast Guard**



Commandant
United States Coast Guard

Washington, DC 20593
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STATEMENT

OF

ADMIRAL PAUL A. YOST
COMMANDANT, UNITED STATES COAST GUARD

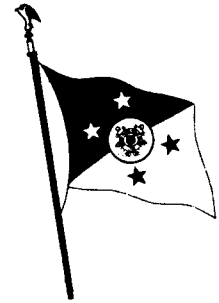
BEFORE THE

SENATE CAUCUS ON
INTERNATIONAL NARCOTICS CONTROL

JUNE 24, 1986



Admiral Paul A. Yost Jr. Commandant United States Coast Guard



Admiral Paul Alexander Yost, Jr. became the 18th Commandant of the United States Coast Guard on May 30, 1986. He was nominated to that position while serving as Commander of the Atlantic Area, Commander Maritime Defense Zone Atlantic, and Commander Third Coast Guard District in New York City where he was assigned in 1984.

In these roles, the Admiral was responsible for Coast Guard operations in the Atlantic, Caribbean, and Gulf of Mexico including drug interdiction, maritime law enforcement, and search and rescue, as well as maritime coastal defense under the authority of the Commander Atlantic Fleet, United States Navy.

Prior to his Third District assignment, Admiral Yost was Chief of Staff of the Coast Guard for three years at Headquarters in Washington, DC, where he managed planning, programming, and budgeting for the service. He was promoted to flag rank in 1978 and served as Eighth District Commander in New Orleans, Louisiana for three years.

Admiral Yost's management and operational positions included Chief of Staff and Chief of Operations for Seventeenth Coast Guard District in Alaska (1975), and Commander Task Group 115.3, a combat command in Vietnam (1969). In addition, he served as Special Assistant to the Deputy Secretary Department of Transportation and an Alternate Delegate on the U.S. Law of the Sea Delegation.

Admiral Yost was Captain of The Port, Seattle, Washington (1974), Special Assistant to the Chief Counsel, Coast Guard Headquarters (1972), and Chief, Bridge Branch, Aids to Navigation Division, Headquarters (1970). Seagoing duty included command of the cutter *Resolute* in San Francisco, California (1966).

Admiral Yost graduated from the Naval War College at Newport, Rhode Island, in 1964. He received master's degrees in international affairs from George Washington University (1964) and in mechanical engineering from the University of Connecticut (1959). He also completed course work toward a master's in business administration. Admiral Yost received a Bachelor of Science Degree from the U.S. Coast Guard Academy in New London, Connecticut, in 1951.

The Commandant's awards include The Distinguished Service Medal, Silver Star, Legion of Merit with combat "V", a gold star in lieu of a second Legion of Merit, Meritorious Service Medal, Combat Action Ribbon, Korean Service Medal, and United Nations Service Medal. He also received The Cross of Gallantry with Silver Star (RVN), Presidential Unit Citation, Navy Meritorious Unit Commendation, and the Distinguished Service Medal (RVN).

A native of St. Petersburg, Florida, Admiral Yost is active in church, school, and community affairs. He was awarded the Silver Beaver Award by the Boys Scouts of America. Admiral Yost is married to the former Jan Worth of Wakefield, Massachusetts. Mrs. Yost earned a degree in communications from the University of Maryland. They have five children: Linda L., Paul A. III, David J., Lisa J., and Christopher J. The Yosts reside in Chevy Chase, Maryland.



Madam Chairman and members of the Caucus, it is a pleasure to appear before you today to provide an overview on the Coast Guard's role in international drug law enforcement.

As you know, most maritime drug traffic destined for Florida, the Atlantic and Gulf Coast regions of the United States departs from South American or Caribbean staging areas. Marijuana from the Guajira Peninsula on the north coast of Colombia is a prime example. There has also been a substantial increase in drug smuggling to our West Coast. Marijuana from Central and South America is most prevalent, which is probably a reaction to increased enforcement pressure in the Caribbean. We have found that the traffickers are able to shift their shipping routes and their shipping modes rapidly in response to interdiction efforts. Our successful vessel interdiction efforts in the Caribbean over the last two years have contributed to a shift to the air shipping mode and the shift of more drugs into the southwest border area.

The very nature of drug trafficking makes it a multination venture and an international problem that will require the full cooperation of foreign government forces to stop.

The Coast Guard's traditional drug interdiction strategy has been mainly directed toward intercepting motherships as they transit the major Caribbean passes. Starting in the fall of 1984, a new strategy was also employed, facilitated by a new awareness by other cooperating countries of the international ramifications of drug trafficking. Operation Wagonwheel, conducted in November and December, 1984, was the key element of a larger national and international operation, Operation Hat Trick, coordinated by the National Narcotics Border Interdiction System (NNBIS). Operation Hat Trick was the first of several multiagency, international operations employing the maximum of flexibility and deception to complement the anti-drug operations being carried out by foreign in-country forces ashore and afloat.

The latest Coast Guard effort, known as Winter Operations, provided a key element of Operation Hat Trick II and was very similar to Hat Trick I, but on a more massive scale. Again, planned and coordinated through NNBIS, the Coast Guard, supported by the U.S. Navy, provided the primary maritime surveillance and interdiction forces, while the Customs Service, Navy, Air Force, Army and Marines conducted air operations. Through Department of State and Drug Enforcement Administration initiatives, the federal agencies worked with our neighbors and allies, primarily Colombia, Panama, Venezuela, Jamaica, Dominican Republic, Costa Rica, and the Bahamas, to provide the maximum coordination of our combined anti-drug operations for in-country efforts. Our European allies provided intelligence platforms and surface surveillance units as well.

The successes of these operations point out the advantage of periodic offensive tactics against trafficking organizations. Additionally, they point out the value of foreign assistance in combatting a problem affecting us all. International cooperation is the cornerstone of a successful narcotics control program. Such cooperation exemplifies the "SPIRIT OF QUITO" - a term coined at the meeting among several leaders of Western Hemisphere Nations in Ecuador in August, 1984. It is a vital commitment for wiping out this disease which threatens all our societies. One nation cannot accomplish the task alone.

An area of significant concern to us in the Coast Guard is the restrictions imposed by the "Mansfield Amendment," 22 U.S.C. 2291(c)(1). Prior to, and especially during the international operations I've just touched on, the Coast Guard often received requests for operational assistance. Many of the smaller countries in the Lesser Antilles have established their own coast guards and have requested our assistance in law enforcement operations and training.

The Mansfield Amendment had been interpreted by the Chief Counsel of the Coast Guard as permitting the Coast Guard to act alone within foreign waters, with the consent of the foreign sovereign, to enforce U.S. law, with respect to U.S., stateless, and third nation vessels with the consent of the flag state. However, the Coast Guard could not DIRECTLY assist foreign personnel in the enforcement of their laws. Under these restrictions, any joint operation or "hands-on" training in foreign territorial waters must be carefully conducted to avoid any direct involvement in foreign drug law enforcement.

Section 605 of the International Security and Development Cooperation Act of 1985 recently amended the Mansfield Amendment. That section provides that the Mansfield Amendment shall not prohibit U.S. personnel from "being present during direct police actions with respect to narcotics control efforts in a foreign country" as long as the Secretary of State and that country agree to the U.S. presence and the agreement is reported to Congress before the agreement takes effect.

The effect of the amended language regarding U.S. "presence" is unclear, at least in the context of the type of joint maritime interdiction efforts noted earlier. In addition, the requirement that the agreement with the foreign country be communicated to Congress before it become effective hinders the amendment's usefulness to the Coast Guard. To be effective, the Coast Guard must have an umbrella agreement with the foreign country, permitting actions on a case-by-case basis, with the umbrella agreement communicated to Congress (rather than case-by-case notifications).

The Coast Guard is working on an interagency committee, chaired by the Drug Enforcement Administration, to propose a plan that would best implement the requirements of this change to the Mansfield Amendment.

The Coast Guard deals with foreign governments on a regular basis in our efforts to interdict narcotics and illegal aliens on foreign vessels. We can board, search, and, if appropriate, seize a United States registered vessel anywhere in U.S. waters or on the high seas. Where foreign vessels are concerned, however, enforcement becomes more difficult.

The boarding of foreign flag vessels is a delicate foreign relations situation. By International Law every vessel has one country to which it belongs - its flag state. Since the vessel is subject to the jurisdiction of its flag state, actions taken against a foreign vessel are also actions against the flag state, and countries are naturally very sensitive about guarding national sovereignty. Thus, in order to board a foreign flag vessel on the high seas, we must obtain the permission of the operator of the vessel or the flag state government. The operator's permission may only extend to boarding and search, and can be terminated at any time by the operator. Seizure requires consent of the flag state. If, in the process of a consensual boarding, we develop reasonable

grounds to believe that the vessel is trafficking in illicit drugs, we will request, through the Department of State, the flag country's authorization to seize the vessel.

When we encounter a foreign vessel we suspect to be engaged in narcotics trafficking, we follow procedures for dealing with non-military incidents established by Presidential Directive. This consists of a conference call usually among the Coast Guard, Department of State and Department of Justice officials. The case is discussed to determine if we have a valid reason to request the suspicious vessel's claimed flag state to conduct a registry check and grant permission to board, search and, if appropriate, seize the vessel. If all parties agree, the Department of State contacts the flag state government through the appropriate American Embassy.

Responses to such requests vary depending on the country and often on the day of the week or relation to a national holiday. Countries often have poor record systems for their vessel registries, and this makes a vessel registry check difficult. Also, it is common that only one person in the flag state has the authority to grant the requests. If that person is unavailable, the request goes unanswered until that person can be reached.

As you can imagine, these delays can adversely affect our law enforcement efforts and can place our boarding parties in danger. For example, if a boarding party goes aboard a vessel with the consent of the master and locates contraband, how long can they safely stay aboard waiting for a response to their request to seize? Obviously, the quicker the response, the smoother and safer our operation will be.

I am glad to report that some countries have an understanding of how time critical these operations are and have streamlined their procedures to answer our requests. In a recent case, we were able to conduct the conference call and have the Government of Colombia respond within two hours on a Sunday morning. Several other countries have also improved the timeliness of their response by permitting the search and seizure of the vessel on their behalf pending completion of their registry check. If the vessel's registry claim is subsequently refuted, the vessel is assimilated to statelessness, making the vessel and its crew subject to U.S. jurisdiction. Other countries do not respond as quickly - one to three days is common.

The Department of State understands our problem and has attempted to enter into formal bilateral agreements with countries to facilitate this enforcement process. It is very disappointing that only one agreement has been signed to date; one with the United Kingdom.

The U.S./United Kingdom bilateral agreement was signed and entered into force on November 13, 1981. It provides that the United Kingdom will not object to Coast Guard boardings of British flag vessels in certain areas if there is reasonable belief that the vessel has on board a cargo of drugs for importation into the U.S. in violation of U.S. law. If illegal drugs are discovered, the U.S. may seize the vessel, although the United Kingdom may obtain release of the vessel within 14 days, and of any United Kingdom national within 30 days, of the vessel's arrival in a U.S. port. It also applies to vessels registered in U.K. dependencies and associated states. A similar type of formal agreement has been concluded between the U.S. and Haiti for interdiction of Haitian vessels suspected of carrying illegal Haitian immigrants to the U.S.

The U.S./U.K. agreement has been extremely effective. We have been working with the Department of State to obtain similar bilateral agreements with other countries. However, despite increased international concerns over narcotics trafficking, a nation's general consent to boardings and seizures of its flag vessels raises delicate issues of national sovereignty. Thus, many nations have found the U.S./U.K. type agreement unacceptable, although they are willing to cooperate on a case-by-case basis.

I should note that the informal procedures between the U.S. and flag states have been effective with respect to our actual interdiction efforts. Some problems have arisen, however, in prosecutions under 21 U.S.C. 955a in our courts. In enacting 21 U.S.C. 955a-d, Congress was concerned that the U.S. not exceed the scope of jurisdiction permitted under international law. To evidence this concern, Congress created four separate offenses, which individually incorporate the status of the vessel or the individual into each substantive offense. Thus, it is unlawful: (1) to possess with intent to distribute controlled substances aboard a vessel of the U.S. or a vessel subject to the jurisdiction of the U.S., i.e., a "stateless" vessel (21 U.S.C. 955a(a)); (2) for any U.S. citizen to possess aboard a vessel controlled substances with intent to distribute (21 U.S.C. 955a(b)); (3) to possess with intent to distribute controlled substances in the customs waters of the United States (21 U.S.C. 955a(c)); and (4) to possess controlled substances intending that they be unlawfully imported into the United States. It is this incorporation of international law jurisdictional principles into the substantive offenses that have given rise to some prosecutorial problems.

The principal difficulties that have arisen involve the necessity of proving vessel status. For example, if, upon inquiry by the Coast Guard, a vessel makes a claim of registry, the U.S. must confirm that registry with the claimed flag state. If the flag state denies registry, the vessel is stateless, i.e., a "vessel subject to the jurisdiction of the United States" under section 955a(a). At this point, the U.S. may, under international law, take law enforcement action against that vessel. However, to prove the element of the offense in court, the U.S. must obtain a formal certification from the claimed flag state attesting that the vessel is not registered in that state. On the other hand, if the claimed state verifies registry, the U.S. obtains that state's consent to take law enforcement action. Once that consent is obtained, the vessel is within the "customs waters of the United States" and may be prosecuted under 21 U.S.C. 955a(c). However, to prove the element of the offense in court, the United States must obtain a formal certification from the flag state verifying registry and confirming its consent for the U.S. to take law enforcement action. The difficulties in obtaining these documents from foreign governments in a timely manner, and in a form acceptable to our courts under the Federal Rules of Evidence, have been considerable. In some cases, Coast Guard officers have had to fly to foreign capitals on the eve of trial to obtain the required documentation. A related problem may arise if the vessel fails to make any claim of registry when approached by the Coast Guard. The vessel may be seized as stateless, but the defendants then offer a document at trial to show that the vessel was validly registered.

Prosecutions would be more effective if international law jurisdictional principles were removed from the substantive offenses. We believe that questions regarding the authority of the Coast Guard to take law enforcement

actions aboard foreign flag vessels should be resolved as a diplomatic matter between the U.S. and the flag state, and not litigated by individual defendants in a criminal trial. Under international law, rights and duties accrue to the sovereign, not to individuals, and individuals generally have no standing to raise violations of international law. Thus, if the flag state is satisfied that the requisites of international law have been satisfied, that should end the matter. Thus, the issue to be litigated at the criminal trial of an individual being prosecuted for drug trafficking would be the essential one: whether that defendant was in fact engaged in illegal drug trafficking.

Finally, I'd like to discuss the level of cooperation we in the Coast Guard have been able to develop with Mexico. In the summer of 1984, the commanding officer of CGC ACUSHNET established a very productive working relationship with local Mexican Navy officials during a port visit in Cozumel. This working relationship has endured. In November and December, 1984, in three separate cases, drug smuggling vessels were pursued by CGC ACUSHNET. All three were intercepted and seized by Mexican Navy vessels in Mexican territorial waters, resulting in the interdiction of over 77,000 pounds of marijuana. In July, 1985, CGC VALIANT consensually boarded a Mexican flag vessel 35 miles north of the Yucatan Peninsula and located seven tons of marijuana in hidden compartments. The Government of Mexico was notified of the discovery through our Embassy in Mexico City. Two Mexican Navy patrol boats were immediately dispatched and, at the request of the Mexican Government, CGC VALIANT detained the vessel until the patrol boats arrived. In March, 1986, CGC DURABLE consensually boarded a sinking Mexican flag vessel in the Gulf of Mexico and discovered six tons of marijuana aboard. The five Mexican crewmen were evacuated to CGC DURABLE, which contacted a Mexican Navy frigate patrolling in the area. The five crewmen and evidence obtained from the sinking vessel were transferred to the Mexican frigate.

These incidents point to a good relationship with the Mexican Navy on the unit level. We are making every effort to nurture the high level of cooperation between our units and the local Mexican Navy commanders through continuing port visits and other initiatives. We are also seeking ways to continue to improve our relationship with the Government of Mexico. On February 18, 1986, Admiral Ramirez de Arellano, then Chief of Naval Operations of the Mexican Navy, visited Washington, D.C., met with Admiral Gracey, then Commandant of the Coast Guard and held day-long meetings with high level members of the Commandant's staff. In April, Vice Admiral Stabile, then Vice Commandant, and Rear Admiral Robbins, Chief, Office of Operations, accompanied the Attorney General to the Mexican-American Law Enforcement Summit in Cancun to discuss law enforcement matters of mutual concern. We hope in the near future to meet with the recently appointed Chief of Naval Operations, Admiral Mauricio Schleske Sanchez, and with high level personnel in his department charged with vessel documentation. We expect that these meetings will lead to even closer relationships with local Mexican Navy commanders and increased cooperation from the Mexican Government.

This concludes my statement, Madam Chairman. I will be happy to answer any questions you or the members of the Caucus may have.